

KEEGAN, WERLIN & PABIAN, LLP

ATTORNEYS AT LAW
21 CUSTOM HOUSE STREET
BOSTON, MASSACHUSETTS 02110-3525

—
(617) 951-1400

TELECOPIERS:
(617) 951-1354
(617) 951-0586

February 4, 2003

Ms. Denise L. Desautels, Presiding Officer
Ms. Selma Urman, Presiding Officer
Energy Facilities Siting Board
One South Station, 2nd Floor
Boston, MA 02110

Re: EFSB 02-RM-02

Dear Ms. Desautels and Ms. Urman:

New England Gas Company ("New England Gas" or the "Company") is pleased to offer brief comments in response to the Final Order Opening Rulemaking (the "Rulemaking") of the Energy Facilities Siting Board (the "Siting Board") issued on December 20, 2002. First and foremost, the Company supports the intent of the Energy Facilities Siting Board (the "Siting Board") to clarify its existing regulations governing the siting of natural gas pipelines. Oftentimes, the uncertainty of determining whether a proposed project is jurisdictional to the Siting Board causes delays in planning and constructing gas pipelines, and thus, the Siting Board's proposed regulations will generally facilitate the Company's planning and construction of gas pipelines in the future.

However, the Company believes that the Siting Board should fine tune the language in its proposed regulations in order to avoid expanding the Siting Board's jurisdiction over certain gas pipeline projects that have traditionally not been jurisdictional. Expanding Siting Board jurisdiction over such projects may result in delays for local gas distribution companies ("LDCs") being able to implement the improvement and modernization of their current pipeline facilities, which may be at odds with the Siting Board's mandate to assure that the Commonwealth's energy facilities are reliable and constructed with a minimum impact on the environmental at the lowest possible cost. Accordingly, the Siting Board should consider addressing provisions in its proposed regulations regarding: (1) the definition of "normal operating pressure"; (2) the provision addressing "replacement pipe" projects. The Siting Board should also consider not allowing the Siting Board's proposed regulations to supersede provisions in 980 C.M.R. 7.07(8) that exempt certain facilities from Siting Board jurisdiction.

First, the Siting Board should remove from its proposed definition of “normal operating pressure” references to “maximum” pressure, including the reference to “maximum allowable operating pressure” (“MAOP”), which would allow the Siting Board to assert jurisdiction over a new pipeline project merely because the pipeline proposed to be constructed has the capability of operating at a pressure above 100 pounds per square inch gauge (“psig”). This expansion of Siting Board jurisdiction over the construction of pipelines that have an MAOP of 150 psig or more will greatly expand the number of projects that must come before the Siting Board for review and will also result in increased costs to customers.

In addition, the delay inherent in subjecting a project to Siting Board review may provide disincentives to companies that wish to expand their operations in the Company’s service territory and require new or expanded gas service in a short period of time. Indeed, the reference to MAOP in the proposed definition of “normal operating pressure” appears to go beyond the plain meaning of the phrase “normal operating pressure” found in G.L. c. 164, § 69G and therefore, should be avoided. Accordingly, the Siting Board should seek to avoid introducing regulatory barriers to the construction of projects with a normal operating pressure below 100 psig by adhering to the plain meaning of the statutory phrase “normal operating pressure” in its definition of the phrase. This could be accomplished by limiting the language in the definition of “normal operating pressure” to language that refers to a pipeline’s “standard,” “ordinary,” or “typical” operating pressure, rather than its “maximum” pressure.

Second, consistent with the statutory language in G.L. c. 164, § 69G regarding the definition of “facility,” the Siting Board should define a “replacement pipe” project as a project involving the “rebuilding, restructuring or relaying of pipeline of the same capacity” as an existing pipeline and exempt such replacement projects from Siting Board review. This language would be consistent with G.L. c. 164, § 69G, which exempts pipeline projects involving rebuilding, relaying or restructuring from Siting Board review. The Siting Board’s proposed language in 980 C.M.R. § 15.01(2)(b) (proposed) regarding an exemption from Siting Board review for “replacement pipe” projects is too narrowly focused on pipelines of “the same nominal diameter and design pressure...within the same right-of-way as the replaced pipe.”

If the Siting Board adopts its current proposed language regarding “replacement pipe” in its final regulations, LDCs will be required to subject to a full Siting Board review many pipeline projects that involve merely replacing old pipe with new pipe of a somewhat larger diameter or normal operating pressure. This effort would inevitably lead to increased costs for customers and would provide a disincentive for LDCs to replace older pipeline facilities. Moreover, delaying the construction of such projects may adversely affect reliability and safety, to the extent that such replacement projects are necessary to upgrade older pipeline facilities. To the extent that the Siting Board believes that it should exempt from its jurisdiction only replacement pipe of the same nominal diameter and design pressure that is to be laid in the same right-of-way as the replaced pipe, the Siting Board should consider reviewing those replacement pipe projects that do not meet this limited description on an expedited basis.

Lastly, the Siting Board should retain its current exemptions from Siting Board review pipeline projects delineated in 980 C.M.R. 7.07(8)(c) and (d). These include projects: (1) to upgrade an existing pipeline, which has been in existence for at least 24 months and is capable of operating at pressures in excess of 100 psig; and (2) to construct pipeline which, for at least the first two years of service, will be used at a pressure less than 100 psig or which involves the rebuilding, relaying, minor relocation, or restructuring of all or part of an existing line which traverses essentially the same route. These exemptions are consistent with the Siting Board's statutory jurisdiction over gas pipeline projects which extends only to new pipeline greater than one mile in length that has a normal operating pressure above 100 psig. Moreover, eliminating these exemptions from the Siting Board's regulations will make jurisdictional the construction of pipeline projects that involves only minor upgrades or locational changes, which will complicate the planning for such facilities and add unnecessary costs to such projects. Accordingly, the Siting Board should maintain these exemptions in its final regulations in this proceeding.

Thank you for your consideration of these comments.

Sincerely,

Cheryl M. Kimball